UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

Thomas E. Perez, Secretary of Labor, United States Department of Labor,	)	CASE NO.
	)	8:14-cv-2318-JSM-EAJ
Plaintiff,	)	
v.	)	
GULF SHORES MARINA, L.L.C.; LAURA M. PRIOLI, an Individual; STEPHEN C. MAIN, an Individual; KENNETH A. MAIN, II, an Individual; and the GSM/RYS 401(k) PLAN;	)	
Defendants.	)	

CONSENT JUDGMENT AND ORDER

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor ("the Secretary"), pursuant to his authority under sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., ("ERISA") has filed an Amended Complaint against Defendants Gulf Shores Marina, L.L.C.; Laura M. Prioli ("Prioli"), an individual; Stephen C. Main ("S. Main"), an individual; and Kenneth A. Main, II, an individual ("K. Main") (collectively, "Defendants"). The GSM/RYS 401(k) Plan is a named defendant pursuant to Fed. R. Civ. P. 19(a) solely to ensure complete relief may be granted. Defendants and the Secretary have agreed to resolve all matters in controversy in this action except for the imposition by the Secretary of any penalty pursuant to ERISA section 502(l), 29 U.S.C. §

1132(l), and any proceedings related thereto, and said parties do now consent to entry of a Judgment and Order by this Court in accordance herewith.

A. The Secretary's Complaint alleges that Defendants breached their fiduciary duties with respect to the GSM/RYS 401(k) Plan ("the Plan") by failing to discharge their duties under the Plan and by violating provisions of sections 403, 404, 406 and 412 of ERISA, 29 U.S.C. §§ 1103, 1104, 1106 and 412 as set forth in the Complaint.

B. Defendants hereby admit to the jurisdiction of the Court over them and over the subject matter of this action. Defendants admit that this Court has the authority to enforce this Order and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order.

C. Defendants expressly waive any and all claims of whatsoever nature that they have or may have against the Secretary, or any of his officers, agents, employees, or representatives, arising out of or in connection with the filing, prosecution, and maintenance of this civil action or any other proceeding and investigation incident thereto.

D. This Order represents a complete settlement of all the Secretary's claims asserted in this action against Defendants with the exception of any potential civil money penalties that may assessed under section 502(l) of ERISA, 29 U.S.C. § 1132(l). This Order is not binding upon any government agency other than the U.S. Department of Labor and only resolves claims arising out of this action as between the Secretary and Defendants.

E. The Secretary and Defendants expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and addressed herein, and consent to the

entry of this Order as a full and complete resolution of all claims and issues which were, or might have been, alleged in this action without trial or adjudication of any issue of fact or law raised in the Complaint.

Accordingly, it is ORDERED ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.

2. Defendants, their agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of Title I of ERISA.

3. Defendants be and they hereby are permanently enjoined from acting as fiduciaries, trustees, agents, or representatives in any capacity to any employee benefit plan, as defined by ERISA.

4. As a result of their fiduciary breaches, Defendants have caused the Plan losses of $48,456.29, plus interest on those funds of $9,562.02 through June 30, 2015, calculated at the applicable Internal Revenue Code section 6621 Rate, for which they are jointly and severally liable.

5. Defendants shall, on or before ~~July~~ Aug. 15, 2015, make restitution to the Plan in the amount of $39,962.31, to be allocated to the accounts of all the current and former participants and beneficiaries, with the exception that none of said amount shall be allocated to the accounts of Defendants Prioli, S. Main, and K. Main. Defendants shall pay a retainer of $1,850.00 to the Plan's successor fiduciary within ten (10) days of entry of this Order.

Checks shall be made payable to the Plan and remitted to the Plan's successor fiduciary. Failure to make restitution to the Plan by July 15, 2015 or to pay the retainer within ten (10) days of entry of this Order shall result in the total balance then remaining to become due and payable immediately, with no further notice or demand required from the successor fiduciary or the Secretary. In the event that Defendants fail to make restitution in the amount ordered, post-judgment interest shall be assessed against any remaining unpaid balance of such amount, in accordance with the U.S. Treasury underpayment rate referenced in 26 U.S.C. § 6621(c)(1) in effect as of July 1, 2015.

6. Defendants Prioli S. Main, and K. Main agree to allow any participant interest they may have in any existing or future assets of the Plan to be applied as an offset against the amounts that the Secretary has alleged are due to the Plan, as authorized by ERISA section 206(d)(4). The Plan document is hereby deemed amended to permit the distribution and offset of Prioli, S. Main, and K. Main's participant interest, as provided herein. A full executed copy of this Consent Judgment and Order shall be maintained by the Plan administrator with all other documents and instruments governing the Plan.

7. By his signature below, Paul F. Prioli, spouse of Laura M. Prioli, waives any claims that he may have for his spouse's benefits under the Plan with respect to his spouse's account, which will be redistributed to other participants, and acknowledges that he understands: (a) that the effect of such consent may be to forfeit the benefits that he would be entitled to receive upon his spouse's death; (b) that his spouse's waiver is not valid without his consent; and (c) that his consent is irrevocable upon the entry of this Order.

8. By her signature below, Patti J. Roberts, spouse of Stephen C. Main, waives any claims that she may have for her spouse's benefits under the Plan with respect to her spouse's account, which will be redistributed to other participants, and acknowledges that she understands: (a) that the effect of such consent may be to forfeit the benefits that she would be entitled to receive upon her spouse's death; (b) that her spouse's waiver is not valid without her consent; and (c) that her consent is irrevocable upon the entry of this Order.

9. By her signature below, Denise T. Main, spouse of Kenneth A. Main, II, waives any claims that she may have for her spouse's benefits under the Plan with respect to her spouse's account, which will be redistributed to other participants, and acknowledges that she understands: (a) that the effect of such consent may be to forfeit the benefits that she would be entitled to receive upon her spouse's death; (b) that her spouse's waiver is not valid without her consent; and (c) that her consent is irrevocable upon the entry of this Order.

10. Once the corrective actions required in this Consent Judgment and Order are complied with, the Secretary is required to assess a civil penalty pursuant to ERISA section 502(l), 29 U.S.C. § 1132(l). The penalty under section 502(l) is equal to 20 percent of the "applicable recovery amount" as that term is defined by ERISA. The parties agree that the "applicable recovery amount" is the amount $39,962.31.

11. AMI Benefit Plan Administrators, Inc., 100 Terra Bella Drive, Youngstown, Ohio 44505; telephone: 330-406-9021, 800-451-2865; facsimile: 866-436-6703; www.amibenefit.com, is appointed as successor fiduciary for the Plan and:

a. The successor fiduciary shall collect, marshal, and administer all of the Plan's assets and take such further actions with respect to the Plan as may be appropriate, including terminating the Plan.

b. The successor fiduciary shall have all the rights, duties, and responsibilities of any fiduciary or trustee described under the Plan documents or the applicable law, with respect to the successor fiduciary's duties.

c. The successor fiduciary is authorized to delegate or assign fiduciary duties as appropriate and allowed under the law.

d. The successor fiduciary shall be entitled to receive reasonable fees and expenses for its services, payable from the assets of the Plan. Defendants shall be responsible for reimbursing the Plan for the entire successor fiduciary's reasonable fees and expenses with respect to services performed for the Plan. The successor fiduciary shall provide to Defendants and the Secretary an invoice for fees and expenses with respect to services performed for the Plan to be paid from the retainer. Prior to obtaining payment from Defendants for services and expenses authorized pursuant to this consent judgment in excess of the $1,850.00 retainer, the successor fiduciary shall file with the Court, with copies to all parties, invoices for such fees and expenses at such times and on such a schedule as the successor fiduciary, in its sole discretion, deems appropriate. The Defendants acknowledge and agrees that an invoice will be considered properly delivered if it is sent electronically and deposited in the United States mail, addressed to:

Gulf Shores Marina
3470 Bayshore Dr.
Naples, FL 34112

e. If no party or the Court objects within ten (10) calendar days of service of any invoice, full payment of such invoice shall be made from the retainer or by Defendants to the Plan, and received by the successor fiduciary, not later than the fifteenth (15th) day following the date of the invoice. Interest shall accrue on any past due amount at the rate of 18% per annum, compounded daily. The Defendants shall be responsible, jointly and severally, for all costs, including reasonable attorneys' fees and expenses, incurred by the successor fiduciary and/or the Plan in the course of collecting such past due amounts. If any party or the Court objects to any payment, the matter should be resolved by the Court prior to payment.

f. Defendants shall deliver or otherwise make available to the successor fiduciary any information, documents, files or other compilations, wherever and however stored; that are reasonably necessary to perform the duties of the successor fiduciary.

g. The successor fiduciary is authorized to give instructions respecting the disposition of assets of the Plan.

h. The successor fiduciary in the performance of its duties may retain such assistance as it may require, including attorneys, accountants, actuaries and other service providers.

i. The payment of administrative expenses and all fees to the successor fiduciary, its assistants, attorneys, accountants, actuaries and other necessary service providers are to be considered priority administrative expenses of the Plan.

j. The successor fiduciary or its agents, employees or representatives may not be held personally responsible for any claims against the Plan which existed, arose, matured or vested prior to the appointment of the successor fiduciary.

k. The successor fiduciary is to comply with all applicable rules and laws.

12. This Consent Judgment resolves all claims of the Secretary's Complaint with the following exceptions:

a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under section 502 (l) of the Act.

b. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.

c. This Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Order and Judgment.

13. Each party shall bear its own costs and expenses, including attorneys' fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

This 4 day of August 2015.

JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

DEFENDANTS GULF SHORES MARINA, L.L.C.; LAURA M. PRIOLI; STEPHEN C. MAIN; KENNETH A. MAIN, II; AND THE GSM/RYS 401(k) PLAN hereby consent to entry of this Consent Judgment and Order

/s/ Michael P. Silver
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Attorneys for Gulf Shores Marina, L.L.C.; Laura M. Prioli; Stephen C. Main; Kenneth A. Main, II; and the GSM/RYS 401(k) Plan

PLAINTIFF THOMAS E. PEREZ, SECRETARY OF LABOR, hereby moves for entry of the Consent Judgment and Order

M. PATRICIA SMITH
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

ROBERT M. LEWIS, JR.
Counsel

/s/ Karen E.Mock
KAREN E. MOCK
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Mock.karen@dol.gov
ATL.Fedcourt@dol.gov

Attorneys for the Secretary of Labor

SPOUSAL CONSENT

Paul F. Prioli, spouse of Laura M. Prioli, hereby consents to entry of this Order, and specifically consents to the terms set forth in paragraph 7 of the Order.

_____
PAUL F. PRIOLI

State of Florida:)
)
)
County of Collier:)

SWORN TO and SUBSCRIBED before me this

_____day of July 2015.

_____
Notary Public

My Commission Expires:_____ (SEAL)

SPOUSAL CONSENT

Patti J. Roberts, spouse of Stephen C. Main, hereby consents to entry of this Order, and specifically consents to the terms set forth in paragraph 8 of the Order.

_____
PATTI J. ROBERTS

State of Florida:)
)
)
County of Collier:)

SWORN TO and SUBSCRIBED before me this

_____day of July 2015.

_____
Notary Public

My Commission Expires:_____ (SEAL)

SPOUSAL CONSENT

Denise T. Main, spouse of Kenneth A. Main, II, hereby consents to entry of this Order, and specifically consents to the terms set forth in paragraph 9 of the Order.

_____
DENISE T. MAIN

State of Florida:)
)
)
County of Collier:)

SWORN TO and SUBSCRIBED before me this

_____day of July 2015.

_____
Notary Public

My Commission Expires:_____ (SEAL)